

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

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MOOG INC.,

Plaintiff,

Case No.: 22-cv-187-LJV-JJM

vs.

SKYRYSE, INC. ROBERT ALIN PILKINGTON, MISOOK
KIM, and DOES NOS. 1-50

Defendants.
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CERTIFICATION PURSUANT TO LOCAL RULE 72(c)

1. “Any party filing objections to a Magistrate Judge’s order or recommended disposition must include with the objections to the District Judge a written statement either certifying that the objections do not raise new legal/factual arguments, or identifying the new arguments and explaining why they were not raised to the Magistrate Judge.” L.R. Civ. P. 72(c).

2. The Individual Defendants’ Objections to Magistrate Judge McCarthy’s Report and Recommendation (“R&R”) (ECF 253) do not raise new legal or factual arguments with two exceptions: The Individual Defendants respond to two issues Magistrate Judge McCarthy raised in the R&R for the first time, which the Individual Defendants had not had an opportunity to brief previously.

3. First, rather than fully resolving the Individual Defendants’ motion to dismiss or transfer (ECF 47), which was filed nearly six months ago, the R&R defers ruling on the Individual Defendants’ motion until after resolution of Moog’s preliminary injunction motion, for which no hearing date has been set. (R&R at 4.) The Individual Defendants could not have reasonably predicted that the R&R would further delay ruling on its motion rather than resolving it. When a hearing was first set on the Individual Defendants’ motion by text order (ECF 223) on August 10

(with no qualification that oral argument on the Individual Defendants’ motion would only be heard in part), the Individual Defendants anticipated that their motion would be resolved in full shortly thereafter. This expectation was in line with Magistrate Judge McCarthy’s email to counsel on August 10, 2022 that he “intend[ed] to give top priority to deciding defendants’ pending motions for dismissal or transfer of venue [47, 48] – for regardless of the outcome of those motions, all parties deserve to know sooner rather than later which court will preside over this litigation.” In their Objections, the Individual Defendants provide case law and argument establishing why their threshold challenges to the Court’s jurisdiction and the propriety of venue should be resolved early in the case, prior to any other decisions on the merits, and why further delaying resolution of the Individual Defendants’ motion unfairly prejudices the Individual Defendants.

4. Second, the R&R considered an argument which Moog made months after the parties had briefed the Individual Defendants’ and Skyryse’s motion. (R&R at 2-4.) Moog argued for the first time in an email to the Court (ECF 247-4) on August 12, 2022 and in its opposition to Skyryse’s supplemental brief (ECF 239 at 3-5) on August 17, 2022 (to which Skyryse and the Individual Defendants had no right of reply) that the Defendants had “agreed” in two stipulations that personal jurisdiction and venue were proper in this Court for purposes of resolving Moog’s motion for a preliminary injunction. Magistrate Judge McCarthy declined to consider the evidence and arguments Defendants would have presented in response to Plaintiff’s new arguments, so the Individual Defendants in their Objections addresses his reasoning and the authority on which he relied in denying Defendants’ leave to present them.

5. I certify under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
September 12, 2022

**WINGET, SPADAFORA &
SCHWARTZBERG, LLP**

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